

REMARKS

Claim 7 has been amended. Claims 7-9 remain pending. Applicants reserve the right to pursue the original claims and other claims in this and other applications.

Claims 7-9 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite under 35 U.S.C. 101 as being directed to non-statutory subject matter. Specifically, the Office action states that “claim 7 recites both a charged particle beam irradiating apparatus and method step setting forth the use of that apparatus.” Reconsideration is respectfully requested, in light of the foregoing Amendment. Claim 7 as amended recites a method . Its limitations regarding the type of irradiating apparatus should be considered appropriate. They do not render the claim indefinite. See *Ex parte Porter*, 25 USPQ2d 1144 (Bd. Pat. App. & Inter. 1992) (holding that a claimed method that recited only the step of “utilizing” a described nozzle was an appropriate claim under § 112).

Claims 7-9 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/253,586. A Terminal Disclaimer is being submitted herewith, with respect to Application No. 10/253,586. Withdrawal of this rejection is requested.

In light of the above, favorable action on the Application, including claims 7-9, is also solicited.

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Respectfully submitted,

By 

Mark J. Thronson

Registration No.: 33,082

Megan S. Woodworth

Registration No.: 53,655

DICKSTEIN SHAPIRO MORIN & OSHINSKY
LLP

2101 L Street NW

Washington, DC 20037-1526

(202) 785-9700

Attorneys for Applicants